

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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CADE SELJAK, JACOB BERNARDI, and
NANCY TAYLOR, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

21 CIVIL 9561 (NRB)

-against-

JUDGMENT

PERVINE FOODS, LLC,

Defendants.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Memorandum and Order dated March 3, 2023, the Court holds that plaintiffs lack standing to bring claims for injunctive relief, and that plaintiffs' claims based on the argument that defendant's use of the term "FIT" is an "implied nutrient content claim" under 21 U.S.C. § 343(r)(1) is expressly pre-empted under the NLEA, 21 U.S.C. § 343-1(a)(5). To the extent plaintiffs also allege claims for monetary relief on the basis that defendant's use of the term "FIT" on their "labeling is false or misleading" under 21 U.S.C. § 343(a)(1), those claims are dismissed as the Court concludes, as a matter of law, that a reasonable consumer would not have been misled by defendant's labelling. Because plaintiffs have failed to state a claim related to the FITCRUNCH products they did purchase, they cannot bring claims for FITBAR products, which they did not purchase. Accordingly, defendant's motion to dismiss is granted in its entirety, and plaintiffs' request for leave to amend is denied; accordingly, the case is closed.

Dated: New York, New York

March 6, 2023

RUBY J. KRAJICK

Clerk of Court

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the left.

BY:

Deputy Clerk